

**Timothy S. DeJong**, OSB No. 940662  
tdejong@stollberne.com  
**Scott Shorr**, OSB No. 961873  
sshorr@stollberne.com  
**Nadine A. Gartner**, OSB No. 103864  
ngartner@stollberne.com  
**STOLL STOLL BERNE LOKTING & SHLACHTER P.C.**  
209 SW Oak Street, Fifth Floor  
Portland, OR 97204  
Telephone: 503.227.1600  
Facsimile: 503.227.6840

Attorneys for Plaintiffs

**Tanya Durkee Urbach**, OSB No. 962668  
urbacht@lanepowell.com  
**Peter D. Hawkes**, OSB No. 071986  
hawkesp@lanepowell.com  
**LANE POWELL PC**  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
Telephone: 503.778.2100  
Facsimile: 503.778.2200

Attorneys for Defendants

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**LARRY ARNETT and RONDA ARNETT**,  
individually and on behalf of all others  
similarly situated,

CV No. 3:11-1372 SI

v.

Plaintiffs,

STIPULATION RESOLVING  
PLAINTIFFS' MOTION TO COMPEL

**BANK OF AMERICA, N.A. and BAC**  
**HOME LOANS SERVICING, L.P.,**

Defendants.

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This Stipulation is entered into by the parties to resolve Plaintiffs' pending Motion to Compel concerning their document requests and interrogatories served on January 4, 2012. Plaintiffs and Defendants have met and conferred and hereby stipulate and agree as follows:

STIPULATED, AGREED, AND ORDERED:

1. With respect to "Class Member Discovery" (RFP Nos. 6, 8, 9, 15, 18, 19, 23, 24, 31, 32, 33 and 38; Interrogatories Nos. 1, 6, 13, 15), the parties agree to the following as a compromise of their respective positions at this pre class-certification stage of the proceedings:

a. On or before May 23, 2012, Defendants shall provide Plaintiffs with the numbers of: (1) loans regarding which the borrowers were sent at least one letter from Bank of America advising that Bank of America required additional proof of flood insurance coverage or additional flood insurance coverage; (2) loans regarding which Bank of America purchased lender-placed insurance and did not subsequently credit or refund the full premium to the borrower; and (3) an approximation of the subsets of (1) and (2) for which Fannie Mae or Freddie Mac owns the loan. Plaintiffs reserve the right to request additional data concerning the numerosity of their proposed classes;

b. Defendants shall produce the data from the customer "complaint" database referenced in Defendants' Memorandum in Opposition to Plaintiffs' Motion to Compel without redaction of borrower information by May 25, 2012. Defendants have determined that certain entries in the database address loans that were not serviced by Bank of America but are part of the database only because Balboa was involved in lender-placed insurance for other lenders. Accordingly, any entries for loans not serviced by Bank of America or its affiliates will be redacted from the production.

c. Plaintiffs shall reserve their right to request discovery of additional class member information if and when the Court certifies a class. Plaintiffs further agree to accept the sampling of information and the other pre-class certification limitations described herein solely as a good-faith accommodation to Defendants' claim of burden. Defendants agree that they will

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not oppose certification of the class specifically based upon any discovery compromises but otherwise reserve their rights to oppose certification of the putative classes;

2. With respect to Class Members with different forms of Deed of Trust, the parties have met and conferred and Defendants have explained that they have not limited their responses to Plaintiffs' discovery requests on this basis except with respect to Interrogatory No. 1 and Request for Production No. 33. The parties have agreed that Plaintiffs shall reserve their right to request additional discovery concerning borrowers who contracted with their lender on forms other than the Fannie Mae/Freddie Mac Uniform Security Instrument in response to Interrogatory No. 1 and Request for Production No. 33 if the Court certifies any class that would encompass such borrowers;

3. Defendants shall endeavor to produce data in response to Interrogatory 1(j)-(n) to the extent such data is available and maintained in a readily accessible format. At this time, as stated in Defendants' Amended Responses and Objections to Plaintiffs' First Set of Interrogatories to Defendants ("Amended Interrogatory Responses"), Defendants expect that data responsive to subparts (j) and (l) (concerning premiums paid and refunded to Defendants) will be so provided, and that data responsive to subpart (k) (concerning premiums paid and refunded by borrowers to private insurers) may be available for some, but not all, borrowers in question. Defendants do not expect that data responsive to subparts (m) and (n) can be produced on a per-loan basis without undue burden because this information is not stored on a per-loan basis in Bank of America's loan servicing databases. If Defendants discover a feasible method to provide the data in subparts (m) and (n) as Plaintiffs have requested, they will endeavor to do so;

4. Defendants shall produce documents responsive to Interrogatory No. 6 as stated in the Amended Interrogatory Responses, which includes policy and procedure documents as well as documents located through the review of custodians' electronic documents;

5. Defendants shall produce documents responsive to Interrogatories Nos. 1(o), 8 and 10; and Request for Production Nos. 22 and 37 as stated in their Amended Interrogatory

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Responses and Amended Responses and Objections to Plaintiffs' First Set of Requests for Production to Defendants ("Amended RFP Responses"). Defendants shall also produce financial documents tracking payments or commissions, if any, received in connection with lender-placed flood insurance, subject to and without waiving the objections asserted in the Amended Interrogatory Responses and Amended RFP Responses with respect to Interrogatories Nos. 1(o), 8 and 10; and Request for Production Nos. 22 and 37;

6. Plaintiffs' position is that the Request for Production No. 37 calls for the meeting minutes and materials of Bank of America's Board of Directors. The Defendants state that their reasonable investigation into Request No. 37 to date has not revealed that any meeting and materials of Bank of America's Board of Directors were created addressing the issues in this litigation, and thus at this time Defendants are not producing Board of Director meeting minutes or materials in response to Request No. 37. If, during their review of documents produced in this litigation, either Defendants or Plaintiffs locate information indicating that meeting minutes or materials of Bank of America's Board of Directors were created that are relevant to the issues in this litigation, Defendants agree to produce such non-privileged materials;

7. Defendants shall produce documents responsive to Request for Production No. 27 which seeks "[a]ll documents concerning internal or external audits, assessments, studies, investigations, or examinations that relate to flood insurance or flood insurance requirements," as stated in their Amended RFP Responses;

8. Plaintiffs' concerns regarding "equal access" objections have been resolved by Defendants' Amended Interrogatory Responses and Amended RFP Responses—which do not assert any "equal access" objections;

9. Defendants have produced and will continue to produce custodial documents collected from the 28 persons Defendants identified as most likely to have information pertaining to this litigation. Plaintiffs may request discovery from additional custodians;

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10. Defendants have produced a list of search terms they have utilized for purposes of electronic discovery, and Plaintiffs may request that additional search terms be utilized;

11. Defendants shall make best efforts to produce their answer to Interrogatory No. 1 and Request for Production No. 33 by May 31, 2012;


12. Defendants shall produce their initial privilege log on or before May 25, 2012, and will supplement it thereafter as necessary;

13. Defendants hereby state that they have already produced documents in support of the affirmative defenses they have asserted, that they are continuing to produce such documents, and that they are not withholding documents from production that they have located and intend to use to support their affirmative defenses at this time; and

14. Defendants shall make best efforts to complete their production of documents relating to Plaintiffs' motion for class certification by June 20, 2012. Defendants anticipate substantially completing their production of files for 24 of their 28 custodians by June 8, 2012.

15. Despite several hours of good-faith negotiation, the parties have been unable to reach a compromise as to certain issues regarding the number (if any), scope, and usage of loan files and servicing records to be produced by the Defendants to the Plaintiffs in this action. The parties are continuing to meet and confer on these issues, but if they are unable to reach agreement, they will submit letter briefs on these issues, of no more than four pages, on or before May 23, 2012 to respectfully request the Court's guidance.

IT IS SO ORDERED this 21<sup>st</sup> day of May, 2012.

  
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**Honorable Michael H. Simon**  
**UNITED STATES DISTRICT JUDGE**

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**STIPULATED AND CONSENTED TO BY:**

DATED this 18th day of May, 2012.

DATED this 18th day of May, 2012.

STOLL STOLL BERNE LOKTING  
& SHLACHTER P.C.

LANE POWELL PC

By: /s/Timothy S. DeJong

**Timothy S. DeJong**, OSB No. 940662  
**Scott A. Shorr**, OSB No. 961873  
**Nadine A. Gartner**, OSB No. 103864  
209 SW Oak Street, 5<sup>th</sup> Floor  
Portland, OR 97204  
Telephone: (503) 227-1600  
Facsimile: (503) 227-6840  
tdejong@stollberne.com  
sshorr@stollberne.com  
ngartner@stollberne.com

By: /s/Tanya Durkee Urbach

**Tanya Durkee Urbach**, OSB No. 962668  
**Peter D. Hawkes**, OSB No. 071986  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
Telephone: (503) 778.2100  
Facsimile: (503) 778.2200  
urbacht@lanepowell.com  
hawkesp@lanepowell.com

-AND-

**Eric L. Cramer** (admitted *pro hac vice*)  
**Shanon J. Carson** (admitted *pro hac vice*)  
**Patrick F. Madden** (admitted *pro hac vice*)  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (215) 875-4656  
ecramer@bm.net  
scarson@bm.net  
pmadden@bm.net

-AND-

**Brett Cebulash** (admitted *pro hac vice*)  
**Kevin S. Landau** (admitted *pro hac vice*)  
TAUS, CEBULASH & LANDAU, LLP  
80 Maiden Lane, Suite 1204  
New York, NY 10038  
Telephone: (212) 931-0704  
bcebulash@tcclaw.com  
klandau@tcclaw.com

**Attorneys for Plaintiffs**

-AND-

**John C. Englander** (admitted *pro hac vice*)  
**David Permut** (admitted *pro hac vice*)  
**Matthew G. Lindenbaum** (admitted *pro hac vice*)  
**Dennis N. D'Angelo** (admitted *pro hac vice*)  
**Dominic D. Gouker** (admitted *pro hac vice*)  
GOODWIN PROCTER LLP  
53 State Street, Exchange Place  
Boston, MA 02109  
Telephone: (617) 570-1771  
jenglander@goodwinprocter.com  
dpermut@goodwinprocter.com  
mlindenbaum@goodwinprocter.com  
ddangelo@goodwinprocter.com  
dgouker@goodwinprocter.com

**Attorneys for Defendants**

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